

P - Draft

SAV

ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2005 ASSEMBLY BILL 850

December 15, 2005 - Offered by Representatives GUNDERSON and GARD.

regen. cat.

1 **AN ACT** *to renumber and amend* 30.12 (1g) (f); *to amend* 30.13 (4) (a), 30.13
2 (4) (b), 30.131 (1) (intro.) and 30.291 (1); and *to create* 30.12 (1g) (f) 2., 30.12
3 (1k), 30.12 (3) (a) 7m., 30.12 (3m) (am), 30.12 (3m) (d), 30.13 (1g) and 30.13 (4)
4 (e) of the statutes; **relating to:** the regulation of certain wharves and piers and
5 granting rule-making authority.

insert 1-6

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 **SECTION 1.** 30.12 (1g) (f) of the statutes is renumbered 30.12 (1g) (f) (intro.) and
7 amended to read:

8 30.12 (1g) (f) (intro.) A pier or wharf that is no more than 6 feet wide, that
9 extends no further than to a point where the water is 3 feet at its maximum depth,
10 or to the point where there is adequate depth for mooring a boat or using a boat hoist
11 or boat lift, whichever is closer to farther from the shoreline, and which that has no
12 more than 2 than either of the following:

~~Except as provided under subd. 2,~~
1. Two boat slips for the first 50 feet of riparian owner's shoreline footage and no more than one additional boat slip for each additional 50 feet of the riparian owner's shoreline ~~if that pier or wharf abuts riparian property on which there is not more than one single-family dwelling.~~

SECTION 2. 30.12 (1g) (f) 2. of the statutes is created to read:

30.12 (1g) (f) 2. Four boat slips for the first 50 feet of riparian owner's shoreline footage and no more than 2 additional boat slips for each additional 50 feet of the riparian owner's shoreline if that pier or wharf abuts riparian property on which there is a multifamily dwelling or a commercial or industrial building.

SECTION 3. 30.12 (1k) of the statutes is created to read:

30.12 (1k) EXEMPTION FOR CERTAIN STRUCTURES. (a) In this subsection, "structure" means a pier, boat shelter, boat hoist, or boat lift.

(b) In addition to the exemptions under par. (1g), a riparian owner of a wharf or pier that was placed on the bed of a navigable water on or before February 6, 2004, ^{insert 2-15} that does not have a deck or loading platform with a surface area that is more than ^[xxx] 400 square feet, and that does not interfere with the riparian rights of adjacent property owners is exempt from the permit requirements under this section if the owner registers the wharf or pier with the department, in the manner ^{and form} required by the department, no later than the first day of the 36th month beginning after the effective date of this paragraph [revisor inserts date]. The department may not charge a fee for the registration of a wharf or pier under this paragraph.

^{insert 2-21} (c) The department may not take any enforcement action under this chapter against a riparian owner of any of the following:

1. A structure for which the department has issued a permit under this section on or before February 6, 2004, if the structure is in compliance with that permit.

~~Except as provided in par. (dm),~~

**** NOTE: This provision is vague and should be rewritten to make more clear exactly which wharves and piers it applies to.

2. A structure for which the department has issued a written authorization on or before February 6, 2004, if the structure is in compliance with that written authorization.

**** NOTE: Consider omitting this provision as unnecessary.

3. A structure that qualifies for the exemption under par. (b).

Except as provided in par. (dm),

(d) The department may not take any enforcement action under this chapter against a riparian owner of a wharf or pier who does not hold a permit as required under this section unless the structure constitutes an unlawful obstruction of navigable waters under s. 30.13.

(e) A riparian owner who is exempt under par. (b) from the permit requirements under this section or who is exempt under par. (c) from enforcement action under this section may do all of the following:

1. Repair ~~and~~ ^{or replace} maintain the structure without obtaining a permit from the department under this section unless the owner enlarges the structure.

2. Relocate ^{or reconfigure} the structure if it is relocated to a different place on the same property where the structure was originally placed.

(f) A riparian owner who is exempt under par. (b) from the permit requirements under this chapter or who is exempt under par. (c) from enforcement action under this chapter may not enlarge the structure without obtaining a permit as required under this section. If the department takes enforcement action against a riparian owner under this paragraph, it may take such action only with regard to the portion of the structure that was enlarged.

SECTION 4. 30.12 (3) (a) 7m. of the statutes is created to read:

30.12 (3) (a) 7m. Place a newly constructed pier that has one additional boat slip than the number of boat slips authorized under sub. (1g) (f) 1.

SECTION 5. 30.12 (3m) (am) of the statutes is created to read:

**** NOTE: Address issue of what constitutes "minor" reconfiguration for which a determination from DNR is not required.

1 30.12 (3m) (am) The department may not refuse to allow a riparian owner to
2 apply for an individual permit for the placement of a pier or wharf, including a solid
3 pier, that exceeds the number of boat slips authorized under sub. (1g) (f). ^{or (1j)} The
4 department shall evaluate such permit applications on an individual basis and shall
5 grant such applications if the department finds that the pier or wharf meets the
6 requirements under par. (c) 1. to 3.

7 **SECTION 6.** 30.12 (3m) (d) of the statutes is created to read:

8 30.12 (3m) (d) 1. In this paragraph, "solid pier" means a pier that does not allow
9 for the free flow of water beneath the pier.

10 2. The department may promulgate rules that limit the issuance of individual
11 permits for solid piers to outlying waters, harbors connected to outlying waters, the
12 Fox River from the dam at De Pere to Lake Winnebago, Lake Winnebago, and the
13 Mississippi River. The rules may establish reasonable conditions to implement the
14 criteria under par. (c) 1. to 3. The rules may not prohibit the issuance of individual
15 permits for solid piers used for private or commercial purposes. ✓

16 **SECTION 7.** 30.13 (1g) of the statutes is created to read:

17 30.13 (1g) EXEMPTION FOR CERTAIN PIERS. Notwithstanding sub. (1), a pier need
18 not meet the conditions specified under sub. (1) (a) to (c) in order to qualify for the
19 exemption under s. 30.12 (1k). ✓

20 **SECTION 8.** 30.13 (4) (a) of the statutes is amended to read:

21 30.13 (4) (a) *Interferes with public rights.* A wharf or pier ~~which~~ that interferes
22 with public rights in navigable waters constitutes an unlawful obstruction of
23 navigable waters unless the wharf or pier is authorized under a permit issued under
24 s. 30.12, unless it is a pier that meets the exemption requirements under s. 30.12 (1k),
25 or unless other authorization for the wharf or pier is expressly provided. ✓

SECTION 9. 30.13 (4) (b) of the statutes is amended to read:

30.13 (4) (b) *Interferes with riparian rights.* A wharf or pier which that interferes with rights of other riparian owners constitutes an unlawful obstruction of navigable waters unless the wharf or pier is authorized under a permit issued under s. 30.12, unless it is a pier that meets the exemption requirements under s. 30.12 (1k), or unless other authorization for the wharf or pier is expressly provided.

SECTION 10. 30.13 (4) (e) of the statutes is created to read:

30.13 (4) (e) A decision of the department against the owner of a structure for which an exemption is claimed under s. 30.12 (1k) is subject to a trial de novo.

SECTION 11. 30.131 (1) (intro.) of the statutes is amended to read:

30.131 (1) (intro.) Notwithstanding s. 30.133, a wharf or pier of the type which does not require a permit under ~~ss. s.~~ s. 30.12 (1) or (1k) ~~and or s.~~ s. 30.13 that abuts riparian land and that is placed in a navigable water by a person other than the owner of the riparian land may not be considered to be an unlawful structure on the grounds that it is not placed and maintained by the owner if all of the following requirements are met:

SECTION 12. 30.291 (1) of the statutes is amended to read:

30.291 (1) For purposes of determining whether an exemption is appropriate under s. 30.12 (1k), (2m) or (2r), 30.123 (6m) or (6r), or 30.20 (1m) or (1r), whether a general permit is appropriate under s. 30.206 (3), or whether authorization to proceed under a general permit is appropriate under s. 30.206 (3r), any employee or other representative of the department, upon presenting his or her credentials, may enter the site and inspect any property on the site.

(END)

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0555/P1ins.

RNK:.....

INSERT 1-6

SECTION 1. 30.03 (4) (am) of the statutes is created to read:

30.03 (4) (am) In determining whether a proposed pier or wharf meets the requirements under s. 30.12 (3m) (c), the department shall consider all alternative proposals offered by the owner of the pier or wharf relating to the location, design, construction, and installation of the pier or wharf.

INSERT 2-9

SECTION 2. 30.12 (1g) (f) of the statutes is amended to read:

30.12 (1g) (f) A pier or wharf that is no more than 6 feet wide, that extends no further than to a point where the water is 3 feet at its maximum depth, or to the point where there is adequate depth for mooring a boat or using a boat hoist or boat lift, whichever is closer to farther from the shoreline, and which that has no more than 2 boat slips for the first 50 feet of riparian owner's shoreline footage and no more than one additional boat slip for each additional 50 feet of the riparian owner's shoreline.

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327.

SECTION 3. 30.12 (1j) of the statutes is created to read:

30.12 (1j) **AUTHORITY FOR ADDITIONAL BOAT SLIPS.** (a) Notwithstanding the limitation on the authorized number of boat slips on piers and wharves under sub. (1g) (f), a riparian owner that has 3 or more dwellings, or has structures for commercial or industrial uses, on riparian property adjacent to a lake of 50 acres or more may elect to place a pier or wharf on the bed of the lake with the number of boat slips specified in this subsection.

(b) If a riparian owner elects to place a pier or wharf with the number of boat slips specified in this subsection, the pier or wharf must meet all of the size

requirements for the placement of the pier or wharf specified under sub. (1g) (f) except for the limitation on the number of boat slips allowed under sub. (1g) (f).

(c) A riparian owner described under par. (a) may place a pier or wharf that has the fewer of either of the following:

1. Four boat slips for the first 50 feet of riparian owner's shoreline footage and no more than 2 boat slips for each additional 50 feet of the riparian owner's shoreline.

2. One boat slip for each dwelling unit, subject to the permit requirements of par. (e).

(d) If a riparian owner qualifies for the placement of a pier or wharf with the number of boat slips specified in par. (c) 1., the riparian owner is exempt from the permit requirements under this section for the placement of the pier or wharf if the pier or wharf is located in an area other than an area of special natural resource interest and does not interfere with the riparian rights of other riparian owners.

(e) If a riparian owner qualifies for the placement of a pier or wharf with the number of boat slips specified in par. (c) 2., the riparian owner shall apply to the department for an individual permit under sub. (3m) authorizing the configuration of the pier or wharf. The department may not deny the permit on the basis that the pier or wharf exceeds the number of authorized boat slips if the pier or wharf has the number of boat slips authorized under this subsection. A riparian owner who qualifies for the placement of a pier or wharf with the number of boat slips specified in par. (c) 2. shall be presumed to be entitled to a permit under sub. (3m).

INSERT 2-21

(b) 1. In addition to the exemptions under par. (1g) and (1j) (d), a riparian owner of a pier or wharf that was placed on the bed of a navigable water on or before

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as
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5
February 6, 2004 is exempt from the permit requirements under this section if all of the following apply:

a. The pier or wharf is not more than 8 feet wide as measured across the shortest horizontal distance of any portion of the pier or wharf surface.

b. If the pier or wharf has a loading platform, the platform is not more than [xxx] square feet.

c. The pier or wharf is in an area other than an area of special natural resource interest.

d. The pier or wharf does not interfere with the riparian rights of adjacent property owners.

e. The riparian owner registers the pier or wharf with the department, in the manner and form required by the department, no later than the first day of the 36th month beginning after the effective date of this paragraph [revisor inserts date].

2. The department shall make available to riparian owners a form for registration of a pier or wharf under this paragraph that is designed so that it may be recorded with the register of deeds. A riparian owner may, but is not required to, register the pier or wharf with the register of deeds of the county where the pier or wharf is located. The register of deeds may charge a fee for the registration of a pier or wharf under this paragraph. The department may not charge a fee for the registration of a pier or wharf under this paragraph.

INSERT 3-8

(dm) The prohibition on enforcement action under pars. (c) and (d) does not apply to enforcement action initiated by the department before February 6, 2004 if

91 ***** NOTE: I understand that the applicable square footage is yet to be determined.

the enforcement action remains pending on the effective date of this paragraph
[revisor inserts date].

INSERT 3-15A

no 1j the owner obtains a determination from the department under sub. (2r) that the structure is exempt under sub. (1g) or (1j) (d)

INSERT 3-24

(em) If a riparian owner requests a determination from the department as required under par. (e) 2. and obtains a determination that the relocation or reconfiguration of a structure is not exempt under sub. (1g) or (1j) (d), the riparian owner may return the structure to its original location and reconfiguration without obtaining a permit.

SECTION 4. 30.12 (1p) (a) (intro.) of the statutes is amended to read:

30.12 (1p) (a) (intro.) The department may promulgate rules concerning the exempt activities under sub. (1g) and (1j) (d) that only do any of the following:

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327.

SECTION 5. 30.12 (1p) (a) 2. of the statutes is amended to read:

30.12 (1p) (a) 2. Establish reasonable construction and design requirements for the placement of structures under sub. (1g) (c), (d), (f), (g), (h), and (km) and sub. (1j) (d) that are consistent with the purpose of the activity.

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327.

SECTION 6. 30.12 (2m) (intro.) of the statutes is amended to read:

30.12 (2m) PERMITS IN LIEU OF EXEMPTIONS. (intro.) The department may decide to require that a person engaged in an activity that is exempt under sub. (1g) or sub. (1j) (d) apply for an individual permit or seek authorization under a general permit if the department has conducted an investigation and visited the site of the activity

and has determined that conditions specific to the site require restrictions on the activity in order to prevent any of the following:

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327.

SECTION 7. 30.12 (2r) (a) of the statutes is amended to read:

30.12 (2r) (a) A person may submit to the department a written statement requesting that the department determine whether a proposed activity is exempt under sub. (1g) or sub. (1j) (d). The statement shall contain a description of the proposed activity and site and shall give the department consent to enter and inspect the site.

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327.

SECTION 8. 30.12 (3m) (a) of the statutes is amended to read:

30.12 (3m) (a) For a structure or deposit that is not exempt under sub. (1g) or sub. (1j) (d) and that is not subject to a general permit under sub. (3), and for a structure or deposit for which the department requires an individual permit under sub. (2m) or s. 30.206 (3r), a riparian owner may apply to the department for the individual permit that is required under sub. (1) in order to place the structure for the owner's use or to deposit the material.

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327.

INSERT 4-6

SECTION 9. 30.12 (3m) (cm) of the statutes is created to read:

30.12 (3m) (cm) In determining whether a proposed pier or wharf meets the requirements under par. (c), the department shall consider all alternative proposals offered by the owner of the pier or wharf relating to the location, design, construction, and installation of the pier or wharf.

SECTION 10. 30.285 (1) (a) of the statutes is amended to read:

30.285 (1) (a) The number of exempted activities that are conducted under ss.
30.12 (1g) and (1k) (d), 30.123 (6), 30.19 (1m), and 30.20 (1g) of which the department
is aware.

History: 2003 a. 118.

1j
—

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
SENATE SUBSTITUTE AMENDMENT ,
TO 2005 ASSEMBLY BILL 850

1 AN ACT *to amend* 30.12 (1g) (f), 30.12 (1p) (a) (intro.), 30.12 (1p) (a) 2., 30.12 (2m)
2 (intro.), 30.12 (2r) (a), 30.12 (3m) (a), 30.13 (4) (a), 30.13 (4) (b), 30.131 (1)
3 (intro.), 30.285 (1) (a) and 30.291 (1); and *to create* 30.03 (4) (am), 30.12 (1j),
4 30.12 (1k), 30.12 (3m) (am), 30.12 (3m) (cm), 30.12 (3m) (d), 30.13 (1g) and 30.13
5 (4) (e) of the statutes; **relating to:** the regulation of certain wharves and piers
6 and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 SECTION 1. 30.03 (4) (am) of the statutes is created to read:

8 30.03 (4) (am) In determining whether a proposed pier or wharf meets the
9 ~~requirements under s. 30.12 (3m) (c)~~, the department shall consider all alternative
10 proposals offered by the owner of the pier or wharf relating to the location, design,
11 construction, and installation of the pier or wharf.

fix this
DNR must listen to owner + owner to DNR
in determining remedy

SECTION 2. 30.12 (1g) (f) of the statutes is amended to read:

30.12 (1g) (f) A pier or wharf that is no more than 6 feet wide, that extends no further than to a point where the water is 3 feet at its maximum depth, or to the point where there is adequate depth for mooring a boat or using a boat hoist or boat lift, whichever is closer to farther from the shoreline, and which that has no more than than 2 boat slips for the first 50 feet of riparian owner's shoreline footage and no more than one additional boat slip for each additional 50 feet of the riparian owner's shoreline.

SECTION 3. 30.12 (1j) of the statutes is created to read:

30.12 (1j) ~~AUTHORITY FOR ADDITIONAL BOAT SLIPS.~~ ^{and subject to par. (b),} ^{amended for certain piers and wharves} (a) Notwithstanding the limitation on the authorized number of boat slips on piers and wharves under sub. (1g) (f), a riparian owner that has 3 or more dwellings, or has structures for commercial or industrial uses, on ^{contiguous} riparian property adjacent to a lake of 50 acres or more may ^{in lieu of placing a pier under (1g)(f),} elect to place a pier or wharf on the bed of the lake with the number of boat slips ^{whichever is smaller;} specified in this subsection, ^{a pier or wharf that has either of the following}

(b) If a riparian owner ^{under} elects to place a pier or wharf with the number of boat slips specified in this subsection, the pier or wharf must meet all of the size requirements for the placement of the pier or wharf specified under sub. (1g) (f) except for the limitation on the number of boat slips allowed under sub. (1g) (f).

(c) A riparian owner described under par. (a) may place a pier or wharf that has the fewer of either of the following:

1. Four boat slips for the first 50 feet of riparian owner's shoreline footage and no more than 2 boat slips for each additional 50 feet of the riparian owner's shoreline.

2. One boat slip for each dwelling unit, subject to the permit requirements of par. (e). ^(d)

add public slips

subject to the permit requirements

unless the boat slips are authorized by the department under a general permit under 5.30.206(1g)

is authorized to place

1 (d) If a riparian owner qualifies for the placement of a pier or wharf with the
2 number of boat slips specified in par. (c) 1., the riparian owner is exempt from the
3 permit requirements under this section for the placement of the pier or wharf if the
4 pier or wharf is located in an area other than an area of special natural resource
5 interest and does not interfere with the riparian rights of other riparian owners.

6 (e) If a riparian owner qualifies for the placement of a pier or wharf with the
7 number of boat slips specified in par. (c) 2., the riparian owner shall apply to the
8 department for an individual permit under sub. (3m) authorizing the configuration
9 of the pier or wharf. The department may not deny the permit on the basis that the
10 pier or wharf exceeds the number of authorized boat slips if the pier or wharf has the
11 number of boat slips authorized under this subsection. A riparian owner who
12 qualifies for the placement of a pier or wharf with the number of boat slips specified
13 in par. (c) 2. shall be presumed to be entitled to a permit under sub. (3m).

14 SECTION 4. 30.12 (1k) of the statutes is created to read:

15 30.12 (1k) EXEMPTION FOR CERTAIN STRUCTURES. (a) In this subsection,
16 "structure" means a pier, ^{wharf} boat shelter, boat hoist, or boat lift.

17 (b) 1. In addition to the exemptions under par. (1g) and (1j) (c), a riparian owner
18 of a pier or wharf that was placed on the bed of a navigable water on or before
19 February 6, 2004, is exempt from the permit requirements under this section if all
20 of the following apply:

21 a. The pier or wharf is not more than 8 feet wide as measured across the
22 shortest horizontal distance of any portion of the pier or wharf surface.

23 b. If the pier or wharf has a loading platform, the platform is not more than
24 [xxx] square feet.

****NOTE: I understand that the applicable square footage is yet to be determined.

*** NOTE: I added wharf to the definition of "structure".
I think this was an inadvertent oversight in the bill.

but boat
requirements
determinations

DNR can
do general
permit
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Exempt
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but if a
pier or
wharf
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apply

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1 c. The pier or wharf does not interfere with the riparian rights of adjacent
2 property owners.

3 d. The riparian owner registers the pier or wharf with the department, in the
4 manner and form required by the department, no later than the first day of the 36th
5 month beginning after the effective date of this subd. 1. d. [revisor inserts date].

6 2. The department shall make available to riparian owners a form for
7 registration of a pier or wharf under this paragraph that is designed so that it may
8 be recorded with the register of deeds. A riparian owner may, but is not required to,
9 register the pier or wharf with the register of deeds of the county where the pier or
10 wharf is located. The register of deeds may charge a fee for the registration of a pier
11 or wharf under this paragraph. The department may not charge a fee for the
12 registration of a pier or wharf under this paragraph.

13 (c) Except as provided in par. (dm), the department may not take any
14 enforcement action under this chapter against a riparian owner of any of the
15 following:

16 1. A structure for which the department has issued a permit under this section
17 on or before February 6, 2004, if the structure is in compliance with that permit.

18 2. A structure for which the department has issued a written authorization on
19 or before February 6, 2004, if the structure is in compliance with that written
20 authorization.

21 3. A structure that qualifies for the exemption under par. (b).

***NOTE: Consider omitting this provision as unnecessary.

22 (d) Except as provided in par. (dm), the department may not take any
23 enforcement action under this chapter against a riparian owner of a wharf or pier

take out 0

delete this + give detailed note

- 1 who does not hold a permit as required under this section unless the ~~structure~~ *wharf or pier*
 2 constitutes an unlawful obstruction of navigable waters under s. 30.13.

***NOTE: This provision is vague and should be rewritten to make more clear exactly which wharves and piers it applies to.

- 3 (dm) The prohibition on enforcement action under pars. (c) and (d) does not
 4 apply to enforcement action initiated by the department before February 6, 2004, if
 5 the enforcement action remains pending on the effective date of this paragraph
 6 [revisor inserts date].

- 7 (e) A riparian owner who is exempt under par. (b) from the permit requirements
 8 *for a structure* under this section or who is exempt under par. (c) from enforcement action under this
 9 *chapter* section may do all of the following:

- 10 1. Repair, maintain, or replace the structure without obtaining a permit from
 11 the department under this section unless the owner enlarges the structure.
 12 2. Relocate or reconfigure the structure if the owner obtains a determination
 13 from the department under sub. (2r) that the structure is exempt under sub. (1g) or
 14 (1j) (d). *only wharf or pier?*

***NOTE: Address issue of what constitutes "minor" reconfiguration for which a determination from DNR is not required.

- 15 (em) If a riparian owner requests a determination from the department *as*
 16 *required* under par. (e) 2. and obtains a determination that the relocation or
 17 reconfiguration of a structure is not exempt under sub. (1g) or (1j) *(c)*, the riparian
 18 owner may return the structure to its original location and reconfiguration without
 19 *obtaining a permit. and the structure continues to qualify for the exemption*

20 SECTION 5. 30.12 (1p) (a) (intro.) of the statutes is amended to read:

- 21 30.12 (1p) (a) (intro.) The department may promulgate rules concerning the
 22 exempt activities under sub. (1g) *(c)* and (1j) *(d)* that only do any of the following:

if owner may (only) does minor relocation or reconf. if legislator but DNR can later disapprove is not minor cannot object

but it shouldn't have been moved!
still applies - fix

1 **SECTION 6.** 30.12 (1p) (a) 2. of the statutes is amended to read:

2 30.12 **(1p)** (a) 2. Establish reasonable construction and design requirements
3 for the placement of structures under sub. (1g) (c), (d), (f), (g), (h), and (km) and sub.
4 (1j) ~~(d)~~ ^(c) that are consistent with the purpose of the activity. *still applies fix*

5 **SECTION 7.** 30.12 (2m) (intro.) of the statutes is amended to read:

6 30.12 **(2m)** PERMITS IN LIEU OF EXEMPTIONS. (intro.) The department may decide
7 to require that a person engaged in an activity that is exempt under sub. (1g) or sub.
8 (1j) ~~(d)~~ ^(c) apply for an individual permit or seek authorization under a general permit
9 if the department has conducted an investigation and visited the site of the activity
10 and has determined that conditions specific to the site require restrictions on the
11 activity in order to prevent any of the following:

12 **SECTION 8.** 30.12 (2r) (a) of the statutes is amended to read:

13 30.12 **(2r)** (a) A person may submit to the department a written statement
14 requesting that the department determine whether a proposed activity is exempt
15 under sub. (1g) or sub. (1j) ~~(d)~~ ^(c). The statement shall contain a description of the
16 proposed activity and site and shall give the department consent to enter and inspect
17 the site. *still applies fix*

18 **SECTION 9.** 30.12 (3m) (a) of the statutes is amended to read:

19 30.12 **(3m)** (a) For a structure or deposit that is not exempt under sub. (1g) or
20 sub. (1j) ~~(d)~~ ^(c) and that is not subject to a general permit under sub. (3), and for a
21 structure or deposit for which the department requires an individual permit under
22 sub. (2m) or s. 30.206 (3r). a riparian owner may apply to the department for the
23 individual permit that is required under sub. (1) in order to place the structure for
24 the owner's use or to deposit the material.

25 **SECTION 10.** 30.12 (3m) (am) of the statutes is created to read:

1 30.12 (3m) (am) The department may not refuse to allow a riparian owner to
2 apply for an individual permit for the placement of a pier or wharf, including a solid
3 pier, that exceeds the number of boat slips authorized under sub. (1g) (f) or (1j). The
4 department shall evaluate such permit applications on an individual basis and shall
5 grant such applications if the department finds that the pier or wharf meets the
6 requirements under par. (c) 1. to 3.

7 **SECTION 11.** 30.12 (3m) (cm) of the statutes is created to read:

8 30.12 (3m) (cm) In determining whether ^{or not to issue or deny} a proposed pier or wharf meets the
9 requirements under par. (c), the department shall consider all alternative proposals
10 offered by the owner of the pier or wharf relating to the location, design, construction,
11 and installation of the pier or wharf.

12 **SECTION 12.** 30.12 (3m) (d) of the statutes is created to read:

13 30.12 (3m) (d) 1. In this paragraph, "solid pier" means a pier that does not allow
14 for the free flow of water beneath the pier.

15 2. The department may promulgate rules that limit the issuance of individual
16 permits for solid piers to outlying waters, harbors connected to outlying waters, the
17 Fox River from the dam at De Pere to Lake Winnebago, Lake Winnebago, and the
18 Mississippi River. The rules may establish reasonable conditions to implement the
19 criteria under par. (c) 1. to 3. The rules may not prohibit the issuance of individual
20 permits for solid piers used for private or commercial purposes.

21 **SECTION 13.** 30.13 (1g) of the statutes is created to read:

22 30.13 (1g) EXEMPTION FOR CERTAIN PIERS. Notwithstanding sub. (1), a pier need
23 not meet the conditions specified under sub. (1) (a) to (c) in order to qualify for the
24 exemption under s. 30.12 (1k).

25 **SECTION 14.** 30.13 (4) (a) of the statutes is amended to read:

*Add provision that 30.13 doesn't apply to
piers & wharves under 30.12*

*needs
to
be consistent
w/ Section 1*

1 30.13 (4) (a) *Interferes with public rights.* A wharf or pier ~~which~~ that interferes
2 with public rights in navigable waters constitutes an unlawful obstruction of
3 navigable waters unless the wharf or pier is authorized under a permit issued under
4 s. 30.12, unless it is a pier that meets the exemption requirements under s. 30.12 (1k).
5 or unless other authorization for the wharf or pier is expressly provided.

6 **SECTION 15.** 30.13 (4) (b) of the statutes is amended to read:

7 30.13 (4) (b) *Interferes with riparian rights.* A wharf or pier ~~which~~ that
8 interferes with rights of other riparian owners constitutes an unlawful obstruction
9 of navigable waters unless the wharf or pier is authorized under a permit issued
10 under s. 30.12, unless it is a pier that meets the exemption requirements under s.
11 30.12 (1k). or unless other authorization for the wharf or pier is expressly provided.

12 **SECTION 16.** 30.13 (4) (e) of the statutes is created to read:

13 30.13 (4) (e) A decision of the department against the owner of a structure for
14 which an exemption is claimed under s. 30.12 (1k) is subject to a trial de novo.

15 **SECTION 17.** 30.131 (1) (intro.) of the statutes is amended to read:

16 30.131 (1) (intro.) Notwithstanding s. 30.133, a wharf or pier of the type which
17 does not require a permit under ~~ss. s.~~ s. 30.12 (1) or (1k) and or s. 30.13 that abuts
18 riparian land and that is placed in a navigable water by a person other than the
19 owner of the riparian land may not be considered to be an unlawful structure on the
20 grounds that it is not placed and maintained by the owner if all of the following
21 requirements are met:

22 **SECTION 18.** 30.285 (1) (a) of the statutes is amended to read:

23 30.285 (1) (a) The number of exempted activities that are conducted under ss.
24 30.12 (1g) and (1j) (d). 30.123 (6), 30.19 (1m), and 30.20 (1g) of which the department
25 is aware.

1 **SECTION 19.** 30.291 (1) of the statutes is amended to read:

30.291 (1) For purposes of determining whether an exemption is appropriate under s. 30.12 (1k), (2m) or (2r), 30.123 (6m) or (6r), or 30.20 (1m) or (1r), whether a general permit is appropriate under s. 30.206 (3), or whether authorization to proceed under a general permit is appropriate under s. 30.206 (3r), any employee or other representative of the department, upon presenting his or her credentials, may enter the site and inspect any property on the site.

8 (END)

Kite, Robin

From: Stolzenberg, John
Sent: Friday, February 24, 2006 8:39 AM
To: Kite, Robin
Subject: Pier draft

Robin,

I hope you are feeling better.

Mark and I went over the changes to the pier draft, LRBs0555/P1 that you 2 had discussed. We discovered 1 item that we had forgot to include in the drafting instructions and thus is not in this draft. This change is that the treatment of s. 30.12 (3m) (am) by SEC. 10 in LRBs0555/P1 should include a cap on the maximum number of boat slips that a riparian owner may request under this paragraph, if the property is being used for 3 or more dwelling units. This cap is one slip for each dwelling plus the number of public slips that the owner will provide. The criteria for a public slip is the same as the criteria that we previously provided to you.

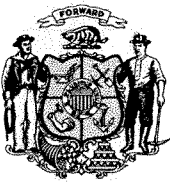
When you have a chance, could you give me an update on where things stand on the /P2 version of the draft.

Thanks.

John

John Stolzenberg
Legislative Council
266-2988

ask John



Today Fri. 2/24
State of Wisconsin
2005 - 2006 LEGISLATURE

Rm run
P2

LRBs0555/P1

RNK:cjs:pg

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE SUBSTITUTE AMENDMENT,

TO 2005 ASSEMBLY BILL 850

SA✓

regen. cat.

1 AN ACT *to amend* 30.12 (1g) (f), 30.12 (1p) (a) (intro.), 30.12 (1p) (a) 2., 30.12 (2m)
2 (intro.), 30.12 (2r) (a), 30.12 (3m) (a), 30.13 (4) (a), 30.13 (4) (b), 30.131 (1)
3 (intro.), 30.285 (1) (a) and 30.291 (1); and *to create* 30.03 (4) (am), 30.12 (1j),
4 30.12 (1k), 30.12 (3m) (am), 30.12 (3m) (cm), 30.12 (3m) (d), 30.13 (1g) and 30.13
5 (4) (e) of the statutes; **relating to:** the regulation of certain wharves and piers
6 and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 SECTION 1. 30.03 (4) (am) of the statutes is created to read:

8 30.03 (4) (am) In determining ~~whether a proposed pier or wharf meets the~~

9 ~~requirements under s. 30.12 (3m) (c),~~ the department shall consider all ~~alternative~~

~~reasonable alternatives~~

10 ~~proposals~~ offered by the owner of the pier or wharf relating to the location, design,

11 construction, and installation of the pier or wharf.

an appropriate remedy for a violation under this chapter relating to a pier or wharf, t.

SECTION 2. 30.12 (1g) (f) of the statutes is amended to read:

30.12 (1g) (f) A pier or wharf that is no more than 6 feet wide, that extends no further than to a point where the water is 3 feet at its maximum depth, or to the point where there is adequate depth for mooring a boat or using a boat hoist or boat lift, whichever is closer to farther from the shoreline, and ~~which that~~ ^{that} has no more ~~than~~ ^{than} 2 boat slips for the first 50 feet of riparian owner's shoreline footage and no more than one additional boat slip for each additional 50 feet of the riparian owner's shoreline.

SECTION 3. 30.12 (1j) of the statutes is created to read:

30.12 (1j) AUTHORITY FOR ADDITIONAL BOAT SLIPS (a) ~~Notwithstanding the~~ ^{FOR CERTAIN PIERS AND WHARVES} ~~limitation on the authorized number of boat slips on piers and wharves under sub.~~ ^{Subject to pars. (b) and (c)} (1g) (f), a riparian owner that has 3 or more dwellings, or has structures for commercial or industrial uses, on ^{contiguous} riparian property, ^{or wharf} adjacent to a lake of 50 acres or more may ~~elect to place a pier or wharf on the bed of the lake with the number of boat slips specified in this subsection,~~ ^{in lieu of placing a pier under (1g) (f), place} ^{that is} ^{which is smaller:} ^{that has either of the following}

(b) If a riparian owner elects to place a pier or wharf with the number of boat slips specified in this subsection, ^{par. (a)} the pier or wharf must meet all of the size requirements for the placement of the pier or wharf specified under sub. (1g) (f) except for the limitation on the number of boat slips allowed under sub. (1g) (f).

(c) A riparian owner described under par. (a) may place a pier or wharf that has the fewer of either of the following:

1. Four boat slips for the first 50 feet of riparian owner's shoreline footage and no more than 2 boat slips for each additional 50 feet of the riparian owner's shoreline.

2. One boat slip for each dwelling ^{unit}, ^{the} subject to the permit requirements of ^{footage} par. (e). ^{plus an additional number of boat slips if the additional slips are open to the public at all times and the use of the additional slips is limited to the transient docking of boats for less}

must be located in an area other than an area of special natural resource interest, may not interfere with the riparian rights of other riparian owners, and

than 24 hours

~~(d) If a riparian owner qualifies for the placement of a pier or wharf with the number of boat slips specified in par. (c) 1., the riparian owner is exempt from the permit requirements under this section for the placement of the pier or wharf if the pier or wharf is located in an area other than an area of special natural resource interest and does not interfere with the riparian rights of other riparian owners.~~

~~(e) If a riparian owner qualifies for the placement of a pier or wharf with the number of boat slips specified in par. (a) 2., the riparian owner shall apply to the~~

department for an individual permit under sub. (3m) authorizing the configuration of the pier or wharf. The department may not deny the permit solely on the basis that the

pier or wharf exceeds the number of authorized boat slips if the pier or wharf has the number of boat slips authorized under this subsection. A riparian owner who

qualifies for the placement of a pier or wharf with the number of boat slips specified in par. (c) 2. shall be presumed to be entitled to a permit under sub. (3m).

SECTION 4. 30.12 (1k) of the statutes is created to read:

30.12 (1k) EXEMPTION FOR CERTAIN STRUCTURES. (a) In this subsection, "structure" means a pier, wharf, boat shelter, boat hoist, or boat lift.

(b) 1. In addition to the exemptions under par. (1g) and (1j) (d), a riparian owner of a pier or wharf that was placed on the bed of a navigable water on or before February 6, 2004, is exempt from the permit requirements under this section if all of the following apply:

a. The pier or wharf is not more than 8 feet wide as measured across the shortest horizontal distance of any portion of the pier or wharf surface.

b. If the pier or wharf has a loading platform, the platform is not more than [xxx] square feet.

***NOTE: I understand that the applicable square footage is yet to be determined.

riparian owner requests the maximum number of slips allowed under par. (a)

insert
3-8

insert
3-20

1 c. The pier or wharf does not interfere with the riparian rights of adjacent
2 ~~property~~ ^{other riparian owners} owners.

3 d. The riparian owner registers the pier or wharf with the department, in the
4 manner and form required by the department, no later than the first day of the 36th
5 month beginning after the effective date of this subd. ~~E~~^{2.} d. [revisor inserts date].

6 ~~The~~^{3.} The department shall make available to riparian owners a form for
7 registration of a pier or wharf under this paragraph that is designed so that it may
8 be recorded with the register of deeds. A riparian owner may, but is not required to,
9 register the pier or wharf with the register of deeds of the county where the pier or
10 wharf is located. The register of deeds may charge a fee for the registration of a pier
11 or wharf under this paragraph. The department may not charge a fee for the
12 registration of a pier or wharf under this paragraph.

13 (c) Except as provided in par. ~~(dm)~~^{(d) ✓}, the department may not take any
14 enforcement action under this chapter against a riparian owner of any of the
15 following:

16 1. A structure for which the department has issued a permit under this section
17 on or before February 6, 2004, if the structure is in compliance with that permit.

18 2. A structure for which the department has issued a written authorization on
19 or before February 6, 2004, if the structure is in compliance with that written
20 authorization.

21 3. A structure that ~~qualifies for the exemption~~ ^{is exempt} under par. (b).

****NOTE: Consider omitting this provision as unnecessary.

22 (d) Except as provided in par. (dm), the department may not take any
23 enforcement action under this chapter against a riparian owner of a wharf or pier

1 who does not hold a permit as required under this section unless the structure
2 constitutes an unlawful obstruction of navigable waters under s. 30.13.

***NOTE: This provision is vague and should be rewritten to make more clear exactly which wharves and piers it applies to.

insert 5-2 (d) 3 (dm) The prohibition on enforcement action under par. (c) and (d) does not
4 apply to enforcement action initiated by the department before February 6, 2004, if
5 the enforcement action remains pending on the effective date of this paragraph
6 [revisor inserts date].

7 (e) A riparian owner who is exempt under par. (b) from the permit requirements
8 under this section or who is exempt under par. (c) from enforcement action under this
9 section may do all of the following:

10 1. Repair, maintain, or replace the structure without obtaining a permit from
11 the department under this section unless the owner enlarges the structure.

12 2. Relocate or reconfigure the structure if the owner obtains a determination
13 from the department under sub. (2r) that the structure is exempt under sub. (1g) or
14 (1j) (d). registers the pier or wharf with the department in the manner and form required by the department.

***NOTE: Address issue of what constitutes "minor" reconfiguration for which a determination from DNR is not required.

15 (em) If a riparian owner requests a determination from the department as
16 required under par. (e) 2. and obtains a determination that the relocation or
17 reconfiguration of a structure is not exempt under sub. (1g) or (1j) (d), the riparian
18 owner may return the structure to its original location and reconfiguration without
19 obtaining a permit.

insert 5-19 20 SECTION 5. 30.12 (1p) (a) (intro.) of the statutes is amended to read:

21 30.12 (1p) (a) (intro.) The department may promulgate rules concerning the
22 exempt activities under sub. (1g) and (1j) (d) that only do any of the following:

concerning boat slips for piers
and wharves under sub.

✓
1 SECTION 6. 30.12 (1p) (a) 2. of the statutes is amended to read:

2 30.12 (1p) (a) 2. Establish reasonable construction and design requirements
3 for the placement of structures under sub. (1g) (c), (d), (f), (g), (h), and (km) and sub.
4 (1j) (d) that are consistent with the purpose of the activity.

5 SECTION 7. 30.12 (2m) (intro.) of the statutes is amended to read:

6 30.12 (2m) ~~PERMITS IN LIEU OF EXEMPTIONS.~~ (intro.) The department may decide
7 to require that a person engaged in an activity that is exempt under sub. (1g) or sub.
8 (1j) (d) apply for an individual permit ~~or seek authorization under a general permit~~
9 if the department has conducted an investigation and visited the site of the activity
10 and has determined that conditions specific to the site require restrictions on the
11 activity in order to prevent any of the following:

12 ✓
SECTION 8. 30.12 (2r) (a) of the statutes is amended to read:

13 30.12 (2r) (a) A person may submit to the department a written statement
14 requesting that the department determine whether a proposed activity is exempt
15 under sub. (1g) or sub. (1j) (d) meets the requirements of. The statement shall contain a description of the
16 proposed activity and site and shall give the department consent to enter and inspect
17 the site. ~~and for any pier or~~
~~wharf under sub. (1j)~~

18 ✓
SECTION 9. 30.12 (3m) (a) of the statutes is amended to read:

19 30.12 (3m) (a) For a structure or deposit that is not exempt under sub. (1g) ~~or~~
20 sub. (1j) (d) and that is not subject to a general permit under sub. (3), and for a
21 structure or deposit for which the department requires an individual permit under
22 sub. (2m) or s. 30.206 (3r), a riparian owner may apply to the department for the
23 individual permit that is required under sub. (1) in order to place the structure for
24 the owner's use or to deposit the material.

25 ✓
SECTION 10. 30.12 (3m) (am) of the statutes is created to read:

1. Except as provided under subd. 2,

30.12 (3m) (am) The department may not refuse to allow a riparian owner to apply for an individual permit for the placement of a pier or wharf, including a solid pier, that exceeds the number of boat slips authorized under sub. (1g) (f) or (1j). The department shall evaluate ~~such~~ permit applications ^{under this paragraph} on an individual basis and shall grant such applications if the department finds that the pier or wharf meets the requirements under par. (c) 1. to 3. ^{to issue an individual permit to the owner of}

SECTION 11. 30.12 (3m) (cm) of the statutes is created to read:

30.12 (3m) (cm) In determining whether a proposed pier or wharf ^{meets the} requirements under par. (c), the department ^{and the owner} shall consider all ^{reasonable} alternative proposals offered by the ^{department and the} owner of the pier or wharf relating to the location, design, construction, and installation of the pier or wharf.

SECTION 12. 30.12 (3m) (d) of the statutes is created to read:

30.12 (3m) (d) 1. In this paragraph, "solid pier" means a pier that does not allow for the free flow of water beneath the pier.

2. The department may promulgate rules that limit the issuance of individual permits for solid piers to outlying waters, harbors connected to outlying waters, the Fox River from the dam at De Pere to Lake Winnebago, Lake Winnebago, and the Mississippi River. The rules may establish reasonable conditions to implement the criteria under par. (c) 1. to 3. The rules may not prohibit the issuance of individual permits for solid piers used for private or commercial purposes.

SECTION 13. 30.13 (1g) of the statutes is created to read:

30.13 (1g) EXEMPTION FOR CERTAIN PIERS. Notwithstanding sub. (1), a pier need not meet the conditions specified under sub. (1) (a) to (c) in order to qualify for the exemption under s. 30.12 (1k).

SECTION 14. 30.13 (4) (a) of the statutes is amended to read:

1 30.13 (4) (a) *Interferes with public rights.* A wharf or pier which that interferes
2 with public rights in navigable waters constitutes an unlawful obstruction of
3 navigable waters unless the wharf or pier is authorized under a permit issued under
4 s. 30.12, unless it is a pier that meets the exemption requirements under s. 30.12 (1k),
5 or unless other authorization for the wharf or pier is expressly provided.

6 **SECTION 15.** 30.13 (4) (b) of the statutes is amended to read:

7 30.13 (4) (b) *Interferes with riparian rights.* A wharf or pier which that
8 interferes with rights of other riparian owners constitutes an unlawful obstruction
9 of navigable waters unless the wharf or pier is authorized under a permit issued
10 under s. 30.12, unless it is a pier that meets the exemption requirements under s.
11 30.12 (1k), or unless other authorization for the wharf or pier is expressly provided.

12 **SECTION 16.** 30.13 (4) (e) of the statutes is created to read:

13 30.13 (4) (e) A decision of the department against the owner of a structure for
14 which an exemption is claimed under s. 30.12 (1k) is subject to a trial de novo.

15 **SECTION 17.** 30.131 (1) (intro.) of the statutes is amended to read:

16 30.131 (1) (intro.) Notwithstanding s. 30.133, a wharf or pier of the type which
17 does not require a permit under ss. s. 30.12 (1) or (1k) and or s. 30.13 that abuts
18 riparian land and that is placed in a navigable water by a person other than the
19 owner of the riparian land may not be considered to be an unlawful structure on the
20 grounds that it is not placed and maintained by the owner if all of the following
21 requirements are met:

Insert 8-21 → 22 **SECTION 18.** 30.285 (1) (a) of the statutes is amended to read:

23 30.285 (1) (a) The number of exempted activities that are conducted under ss.
24 30.12 (1g) and (1j) (d) ^(1k), 30.123 (6), 30.19 (1m), and 30.20 (1g) of which the department
25 is aware.

insert 8-25 →

1 **SECTION 19.** 30.291 (1) of the statutes is amended to read:

2 30.291 (1) For purposes of determining whether an exemption is appropriate
3 under s. 30.12 (1k), (2m) or (2r), 30.123 (6m) or (6r), or 30.20 (1m) or (1r), whether
4 a general permit is appropriate under s. 30.206 (3), or whether authorization to
5 proceed under a general permit is appropriate under s. 30.206 (3r), any employee or
6 other representative of the department, upon presenting his or her credentials, may
7 enter the site and inspect any property on the site.

(END)

insert
9-7

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0555/P2ins.

RNK:.....

INSERT 3-8

no 4 unless the boat slips are authorized by the department under a general permit under s. 30.206 (1g). ✓

INSERT 3-20

2. In addition to the exemptions under par. (1g), a riparian owner of a pier or wharf that was placed on the bed of a navigable water on or before February 6, 2004⁵ is exempt from the permit requirements under this section if all of the following apply:

INSERT 5-2

****NOTE: The previous version of this draft contained a provision created as s. 30.12 (1k) (d). That provision was as follows: "(d) Except as provided in par. (dm), the department may not take any enforcement action under this chapter against a riparian owner of a wharf or pier who does not hold a permit as required under this section unless the structure constitutes an unlawful obstruction of navigable waters under s. 30.13." I have removed that provision from this version of the draft because I think this concept is covered by the created language in s. 30.12 (1k) (c). Please review this issue closely to ensure that the removal of this provision does not have unintended consequences. ✓

INSERT 5-19

2. If the exempt structure is a pier or wharf, relocate or reconfigure the pier or wharf if the riparian owner first registers the pier or wharf with the department in the manner and form required by the department. The department may not object to a minor relocation or reconfiguration. If the department otherwise objects to the relocation or reconfiguration of the pier or wharf, and the riparian owner places the structure in its original location and reconfiguration, the pier or wharf continues to qualify for the exemptions under par. (b) and (c). ✓

pier or wharf

****NOTE: Please look at this language very closely to ensure that I have accurately captured the intent of provision.

your instructions

The department may refuse to allow

(f) A decision of the department against the owner of a structure for which an exemption is claimed under this subsection is subject to a trial de novo.

INSERT 7-6

2. ~~A~~ riparian owner that has 3 or more dwellings on contiguous riparian property adjacent to a lake of 50 acres or more ~~may not~~ ^{to} apply for an individual permit for the placement of a pier or wharf with a number of boat slips that exceeds the number of boat slips specified in sub. (1j) (a) 2.

INSERT 7-20

SECTION 1. 30.13 (1g) of the statutes is created to read:

30.13 (1g) EXCEPTION. Subsection (1) does not apply to piers and wharves regulated under s. 30.12.

INSERT 8-21

****NOTE: Should this provision also contain a cross-reference to s. 30.12 (1j)?

SECTION 2. 30.206 (1g) of the statutes is created to read:

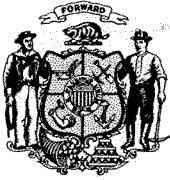
30.206 (1g) GENERAL PERMIT FOR CERTAIN PIERS AND WHARVES. The department may issue a general permit under this section for the placement of piers and wharves under s. 30.12 (1j).

INSERT 8-25

****NOTE: Should this provision also contain a cross-reference to s. 30.12 (1j)?

INSERT 9-21 7

****NOTE: Should this provision also contain a cross-reference to s. 30.12 (1j)?



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

stays

SENATE SUBSTITUTE AMENDMENT,

TO 2005 ASSEMBLY BILL 850

SAV
int ref

regen. cat.

1 AN ACT *to amend* 30.12 (1g) (f), 30.12 (1p) (a) (intro.), 30.12 (1p) (a) 2., 30.12 (2r)
2 (a), 30.12 (3m) (a), 30.131 (1) (intro.), 30.285 (1) (a) and 30.291 (1); and *to create*
3 30.03 (4) (am), 30.12 (1j), 30.12 (1k), 30.12 (3m) (am), 30.12 (3m) (cm), 30.12
4 (3m) (d), 30.13 (1g) and 30.206 (1g) of the statutes; **relating to:** the regulation
5 of certain wharves and piers and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 30.03 (4) (am) of the statutes is created to read:

7 30.03 (4) (am) In determining an appropriate remedy for a violation under this
8 chapter relating to a pier or wharf, the department ~~shall~~ consider ³ all reasonable
9 alternatives offered by the owner of the pier or wharf relating to the location, design,
10 construction, and installation of the pier or wharf.

11 SECTION 2. 30.12 (1g) (f) of the statutes is amended to read:

department and the

may not order the removal
of a pier or wharf unless
the department

1 30.12 (1g) (f) A pier or wharf that is no more than 6 feet wide, that extends no
2 further than to a point where the water is 3 feet at its maximum depth, or to the point
3 where there is adequate depth for mooring a boat or using a boat hoist or boat lift,
4 whichever is ~~closer to~~ farther from the shoreline, and which that has no more than
5 than 2 boat slips for the first 50 feet of riparian owner's shoreline footage and no more
6 than one additional boat slip for each additional 50 feet of the riparian owner's
7 shoreline.

8 **SECTION 3.** 30.12 (1j) of the statutes is created to read:

9 30.12 (1j) BOAT SLIPS FOR CERTAIN PIERS AND WHARVES. (a) Subject to pars. (b)
10 and (c), a riparian owner that has 3 or more dwellings, ^{units} or has structures for
11 commercial or industrial uses, on contiguous riparian property that is adjacent to a
12 lake of 50 acres or more may, in lieu of placing a pier or wharf under (1g) (f), place
13 a pier or wharf that has either of the following number of boat slips, whichever is
14 smaller:

15 1. Four boat slips for the first 50 feet of the riparian owner's shoreline footage
16 and no more than 2 boat slips for each additional 50 feet of the riparian owner's
17 shoreline footage.

18 2. One boat slip for each dwelling, ^{unit} plus an additional number of boat slips if the
19 additional slips are open to the public at all times and the use of the additional slips
20 is limited to the transient docking of boats for less than 24 hours.

21 (b) If a riparian owner elects to place a pier or wharf with the number of boat
22 slips specified in par. (a), the pier or wharf must be located in an area other than an
23 area of special natural resource interest, may not interfere with the riparian rights
24 of other riparian owners, and must meet all of the size requirements for the

placement of the pier or wharf specified under sub. (1g) (f) except for the limitation on the number of boat slips allowed under sub. (1g) (f).

(c) If a riparian owner is eligible to place a pier or wharf with the number of boat slips specified in par. (a), the riparian owner shall apply to the department for an individual permit under sub. (3m) ^{30.208} authorizing the configuration of the pier or wharf unless the ~~boat slips are~~ ^{the configuration is} authorized by the department under a general permit under s. 30.206 (1g). The department may not deny the permit solely on the basis ~~that the~~ ^{of the number of slips proposed by the} riparian owner ~~requests the maximum number of slips allowed under par. (a)~~. A riparian owner who applies for a permit under this paragraph shall be presumed to be entitled to the number of slips allowed under par. (a).

SECTION 4. 30.12 (1k) of the statutes is created to read:

30.12 (1k) EXEMPTION FOR CERTAIN STRUCTURES. (a) In this subsection, "structure" means a pier, wharf, boat shelter, boat hoist, or boat lift.

(b) 1. In addition to the exemptions under par (1g), a riparian owner of a boat shelter, boat hoist, or boat lift that was placed on the bed of a navigable water on or before February 6, 2004, is exempt from the permit requirements under this section.

2. In addition to the exemptions under par (1g), a riparian owner of a pier or wharf that was placed on the bed of a navigable water on or before February 6, 2004, is exempt from the permit requirements under this section if all of the following apply:

a. The pier or wharf is not more than 8 feet wide as measured across the shortest horizontal distance of any portion of the pier or wharf surface.

b. If the pier or wharf has a loading platform, the platform is not more than ~~xxx~~ ²⁰⁰ square feet.

***NOTE: I understand that the applicable square footage is yet to be determined.

except that ~~a~~ pier ~~may~~ ^{may} have a single area as a loading platform that exceeds 8 feet in width if that area is located at the lakeward end of the pier and does not exceed 200 square feet in surface area

b.
1 ~~a.~~ The pier or wharf does not interfere with the riparian rights of other riparian
2 owners.

c.
3 ~~d.~~ The riparian owner registers the pier or wharf with the department, in the
4 manner and form required by the department, no later than the first day of the 36th
5 month beginning after the effective date of this subd. 2. ~~d.~~ [revisor inserts date].

6 3. The department shall make available to riparian owners a form for
7 registration of a pier or wharf under this paragraph that is designed so that it may
8 be recorded with the register of deeds. A riparian owner may, but is not required to,
9 ~~register the pier or wharf with the register of deeds of the county where the pier or~~ *record the registration form*
10 ~~wharf is located. The register of deeds may charge a fee for the registration of a pier~~ *the under s. 59.43(2)(a)*
11 ~~or wharf under this paragraph. The department may not charge a fee for the~~ *recording*
12 registration of a pier or wharf under this paragraph.

13 (c) Except as provided in par. (d), the department may not take any enforcement
14 action under this chapter against a riparian owner of any of the following:

15 1. A structure for which the department has issued a permit under this section
16 on or before February 6, 2004, if the structure is in compliance with that permit.

17 2. A structure for which the department has issued a written authorization on
18 or before February 6, 2004, if the structure is in compliance with that written
19 authorization.

20 3. A structure that is exempt under par. (b). */P1*

****NOTE: The previous version of this draft contained a provision created as s. 30.12 (1k) (d). That provision was as follows: "(d) Except as provided in par. (dm), the department may not take any enforcement action under this chapter against a riparian owner of a wharf or pier who does not hold a permit as required under this section unless the structure constitutes an unlawful obstruction of navigable waters under s. 30.13." I have removed that provision from this version of the draft because I think this concept is covered by the created language in s. 30.12 (1k) (c). Please review this issue closely to ensure that the removal of this provision does not have unintended consequences.

C.
under par. (b) 2. ~~the~~ and, before relocating or reconfiguring the pier or wharf, registers the pier or wharf with the department under this subdivision ~~paragraph~~

1 (d) The prohibition on enforcement action under pars. (c) does not apply to
2 enforcement action initiated by the department before February 6, 2004, if the
3 enforcement action remains pending on the effective date of this paragraph
4 [revisor inserts date].

5 (e) A riparian owner who is exempt under par. (b) from the permit requirements
6 under this section or who is exempt under par. (c) from enforcement action under this
7 chapter may do all of the following:

8 1. Repair, maintain, or replace the exempt structure without obtaining a
9 permit from the department under this section unless the owner enlarges the
10 structure.

11 2. If the exempt structure is a pier or wharf, relocate or reconfigure the pier or
12 wharf if the riparian owner ~~first registers~~ ^{registered} the pier or wharf with the department ~~in~~
13 ~~the manner and form required by the department.~~ The department may not object
14 to a minor relocation or reconfiguration. If the department objects to the relocation
15 or reconfiguration of the pier or wharf, and the riparian owner ~~places~~ ^{retains} the pier or
16 wharf in its original location and configuration, the pier or wharf continues to qualify
17 for the exemptions under par. (b) and (c).

***NOTE: Please look at this language very closely to ensure that I have accurately captured your instructions.

18 (f) A decision of the department against the owner of a structure for which an
19 exemption is claimed under this subsection is subject to a trial de novo.

20 **SECTION 5.** 30.12 (1p) (a) (intro.) of the statutes is amended to read:

21 30.12 (1p) (a) (intro.) The department may promulgate rules concerning the
22 exempt activities under sub. (1g) and concerning boat slips for piers and wharves
23 under sub. (1j) that only do any of the following:

**** NOTE: This provision applies to the relocation and reconfiguration of both permanent and seasonal piers and requires registration with the department before relocation and reconfiguration. Is this O.K.?

1 **SECTION 6.** 30.12 (1p) (a) 2. of the statutes is amended to read:

2 30.12 **(1p)** (a) 2. Establish reasonable construction and design requirements
3 for the placement of structures under sub. (1g) (c), (d), (f), (g), (h), and (km) ~~and sub.~~
4 ~~(1j)~~ that are consistent with the purpose of the activity. *the placement of*
and for boat slips
under sub. (1j)

5 **SECTION 7.** 30.12 (2r) (a) of the statutes is amended to read:

6 30.12 **(2r)** (a) A person may submit to the department a written statement
7 requesting that the department determine whether a proposed activity is exempt
8 under sub. (1g) or meets the requirements of sub. (1j). The statement shall contain
9 a description of the proposed activity and site and shall give the department consent
10 to enter and inspect the site.

11 **SECTION 8.** 30.12 (3m) (a) of the statutes is amended to read:

12 30.12 **(3m)** (a) For a structure or deposit that is not exempt under sub. (1g) and
13 that is not subject to a general permit under sub. (3), and for a structure or deposit
14 for which the department requires an individual permit under sub. (2m) or s. 30.206
15 (3r), a riparian owner may apply to the department for the individual permit that is
16 required under sub. (1) in order to place the structure for the owner's use or to deposit
17 the material.

18 **SECTION 9.** 30.12 (3m) (am) of the statutes is created to read:

19 30.12 **(3m)** (am) 1. Except as provided under subd. 2., the department may not
20 refuse to allow a riparian owner to apply for an individual permit for the placement
21 of a pier or wharf, including a solid pier, that exceeds the number of boat slips
22 authorized under sub. (1g) (f) or (1j). The department shall evaluate permit
23 applications under this paragraph on an individual basis and shall grant such
24 applications if the department finds that the pier or wharf meets the requirements
25 under par. (c) 1. to 3.

department may not deny the permit unless the

1 2. The department may refuse to allow a riparian owner that has 3 or more
2 dwellings^{units} on contiguous riparian property adjacent to a lake of 50 acres or more to
3 apply for an individual permit for the placement of a pier or wharf with a number of
4 boat slips that exceeds the number of boat slips specified in sub. (1j) (a) 2.

5 **SECTION 10.** 30.12 (3m) (cm) of the statutes is created to read:

6 30.12 (3m) (cm) In determining whether to issue an individual permit to the
7 owner of a proposed pier or wharf, the department and owner shall consider^s all
8 reasonable alternatives offered by the department and the owner of the pier or wharf
9 relating to the location, design, construction, and installation of the pier or wharf.

10 **SECTION 11.** 30.12 (3m) (d) of the statutes is created to read:

11 30.12 (3m) (d) 1. In this paragraph, "solid pier" means a pier that does not allow
12 for the free flow of water beneath the pier.

13 2. The department may promulgate rules that limit the issuance of individual
14 permits for solid piers to outlying waters, harbors connected to outlying waters, the
15 Fox River from the dam at De Pere to Lake Winnebago, Lake Winnebago, and the
16 Mississippi River. The rules may establish reasonable conditions to implement the
17 criteria under par. (c) 1. to 3. The rules may not prohibit the issuance of individual
18 permits for solid piers used for private or commercial purposes.

19 ~~**SECTION 12.** 30.13 (1g) of the statutes is created to read:~~

20 ~~30.13 (1g) EXCEPTION. Subsection (1) does not apply to piers and wharves~~
21 ~~regulated under s. 30.12.~~

22 **SECTION 13.** 30.131 (1) (intro.) of the statutes is amended to read:

23 30.131 (1) (intro.) Notwithstanding s. 30.133, a wharf or pier of the type which
24 does not require a permit under ~~ss.~~ s. 30.12 (1) or (1k) and or s. 30.13 that abuts
25 riparian land and that is placed in a navigable water by a person other than the

insert
7-21A
7-21

owner of the riparian land may not be considered to be an unlawful structure on the grounds that it is not placed and maintained by the owner if all of the following requirements are met:

****NOTE. Should this provision also contain a cross-reference to s. 30.12 (1j)?

SECTION 14. 30.206 (1g) of the statutes is created to read:

30.206 (1g) GENERAL PERMIT FOR CERTAIN PIERS AND WHARVES. The department may issue a general permit under this section for the placement of piers and wharves *the configuration of a pier or wharf* under s. 30.12 (1j).

SECTION 15. 30.285 (1) (a) of the statutes is amended to read:

30.285 (1) (a) The number of exempted activities that are conducted under ss. 30.12 (1g) and (1k), 30.123 (6), 30.19 (1m), and 30.20 (1g) of which the department is aware.

inserts
8-11
8-13
****NOTE. Should this provision also contain a cross-reference to s. 30.12 (1j)?

SECTION 16. 30.291 (1) of the statutes is amended to read:

30.291 (1) For purposes of determining whether an exemption is appropriate under s. 30.12 (1k), (2m) or (2r), 30.123 (6m) or (6r), or 30.20 (1m) or (1r), whether a general permit is appropriate under s. 30.206 (3), or whether authorization to proceed under a general permit is appropriate under s. 30.206 (3r), any employee or other representative of the department, upon presenting his or her credentials, may enter the site and inspect any property on the site.

****NOTE. Should this provision also contain a cross-reference to s. 30.12 (1j)?

(END)

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RNK:.....

INSERT 3-10

***NOTE: This provision, as drafted, implies that the riparian owner may be able to have more slips than the maximum allowed given that DNR may not deny a permit solely on the basis of the number of slips proposed by the owner. Is this intended?

INSERT 3-22

***NOTE: Please note that this description uses the term "lakeward end". Is it possible for the pier to be placed on a river? If so, this provision may need redrafting.

INSERT 7-21A

SECTION 1. 30.13 (1) (intro.) of the statutes is amended to read:

30.13 (1) CONSTRUCTION ALLOWED WITHOUT PERMIT UNDER CERTAIN CIRCUMSTANCES. (intro.) A riparian proprietor may construct a wharf or pier in a navigable waterway extending beyond the ordinary high-water mark or an established bulkhead line in aid of navigation without obtaining a permit under s. 30.12 if the wharf or pier is exempt from obtaining a permit under s. 30.12 or if all of the following conditions are met:

History: 1981 c. 252; 1987 a. 374; 1999 a. 150 ss. 3, 120, 123, 125, 127, 129, 131, 133; 2003 a. 118.

INSERT 8-11B

SECTION 2. 30.285 (2) (intro.) of the statutes is amended to read:

30.285 (2) (intro.) For each record kept under sub. (1) (b) to ~~(d)~~ (e), the department shall include all of the following:

History: 2003 a. 118.

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0555/P3ins.

RNK:.....

INSERT 7-21

****NOTE: Current law regulates piers and wharves placed by riparian owners under both s. 30.12 and s. 30.13. Those provisions in current law are not entirely consistent. This provision is my attempt to reconcile these provisions and to make clear that s. 30.13 does not apply to those piers and wharves that are regulated under s. 30.12. Please review this provision very closely, however, to ensure that this provision is consistent with your instructions. ✓

INSERT 8-11

✓

SECTION 1. 30.285 (1) (e) of the statutes is created to read:

30.285 (1) (e) The number of piers and wharves for which the department issued a permit authorizing the configuration of the pier or wharf under s. 30.12 (1j) (e). ✓

7/1/07